and that the debtor had no interest in it. These considerations apply even more strongly in the present case, as section 103 (4) provides that such moneys must be paid into Court for the benefit of creditors who cannot be found or cannot be identified and the sub-section admits of no qualification of their rights whatever.

In the present case the final dividend, a payment in full to the creditors who had proved, was paid in July, 1929. Within six months of that date the balance should have been, and no doubt was, paid into Court to the credit of the Bankruptcy Estates Account under the provisions of section 132 (1) of the Ordinance. More than five years have elapsed since that date and the money should have been transferred and been at the disposal of the Governor-in-Council under the provisions of section 103 (3). This has apparently not been done.

The directions of the Court are, therefore, that the debtor has no interest in the sum of $495.03 and that it should be dealt with as provided by section 132 (3) of the Ordinance.

Order Accordingly.

[ORIGINAL CIVIL JURISDICTION]

PRICHARD, J.

December 11, 1934.

IN THE MATTER OF THE TRUSTS OF THE WILL OF LOW GUAN SWI DECEASED. ESTATE & TRUST AGENCIES (1927) LTD: vs. MARIA AND OTHERS.

[MALACCA ORIGINATING SUMMONS No. 30 of 1934]

Will—construction—gift of income to widow of son of Chinese testator—position of secondary wife.

By his Will the Testator made a bequest of a proportion of the net income of certain property to his son Low Kay Whay during his life and after his death to his widow. At the time of the making of the Will, and at the time of the death of the Testator the said Low Kay Whay had only one wife, but he subsequently took a secondary wife. Both wives survived him.

Held, that both the secondary wife and the principal wife were entitled as widows of Low Kay Whay.

Originating Summons.

The Testator, Low Guan Swi made a Will dated the 13th May, 1895. He died on the 18th June, 1898 and the Will was proved by his widow the sole executrix and trustee. By the Will certain property described as the Reserved Trust Estate was given to the Testator's trustee to be held on certain trusts during the life of the longest liver of six named persons (sons and grandsons of the Testator) and for the further period of 21 years thereafter. The income of the Reserved Trust Estate was given to Chan Tew Neo, the Testator's widow for her life, and after her death the Testator directed that the rents, issues and profits of the Reserved Trust Estate should be dealt with in the following manner, that is to say:—

> "(a) One fourth part or share thereof shall be paid to my said son Low Kay Whay during his life and after his death to his widow for the maintenance and support of herself and any child or children of the said Low Kay Whay living at the time of his death and should the said Low Kay Whay die without issue I direct that the said part or share be paid to his said widow during her life and after her death the same shall lapse and form part of my said Reserved Trust Estate."

At the time of the making of the Testator's will and at the time of the Testator's death, the said Low Kay Whay had only one wife namely Chua Geok Koon. Subsequently to the death of the Testator, his son Low Kay Whay contracted a marriage with a secondary wife, Maria, in the the lifetime of Chua Geok Koon. Low Kay Whay had three children by Chua Geok Koon and three children by Maria, two sons and one daughter. Low Kay Whay died on the 7th December 1904. Chua Geok Koon died on the 12th May 1922. Maria is still alive.

In 1929 new trustees, namely, Estate & Trust Agencies (1927) Limited, were appointed in respect of the estate of Low Guan Swi deceased. Maria claimed to be entitled to the whole or a part of the one quarter of the net income of the Reserved Trust Estate given by the Testator under the clause in his Will quoted above. The legal personal representative of Chua Geok Koon also made a claim thereto. The claim of Maria was resisted by the representative of Chan Tew Neo (the widow of the Testator) who was also the general residuary legatee. These claims were notified to the Trustees, Estate & Trust Agencies (1927) Limited who thereupon took out an Originating Summons for construction of the Will of the Testator and for decision of the questions raised. The Summons came on for hearing in Malacca on the 24th day of September 1934 before Prichard, J.

John Laycock for Maria (1st Defendant). The general presumption is that a gift to the wife of A, if A has a wife living at the date of the Will, goes to that wife as a *persona designata* and to nobody else. But even if the word "wife" is used there may be indications in the Will that the Testator intends by the word "wife"—any wife; and the above presumption can be rebutted by the context of the Will. Here the word used is "widow" not "wife." As *nemo est haeres viventis*, so *nemo*

est vidua viventis. The wife of a named person is ascertainable at any given time; but his widow can only be ascertained after his death. This is a gift to a person or persons filling a certain character namely, widow or widows of Low Kay Whay. Such a person or persons could not be ascertained until after the death of Low Kay Whay. So in a policy of insurance the word "widow" is not confined to the person who was the wife when the policy was issued. *In re Lory, deceased*, 7 T.L.R. 419. *In re Drew; Drew* vs. *Drew*, (1899) 1 Ch. 536. *Jarman*, 3rd Edn. 376. *In re Parker's Policies*, (1906) 1 Ch. 526. In this case there was evidently a general intention on the part of the Testator to provide for the family of Low Kay Whay.

If a Chinese (or formerly a Mohammedan) die intestate in the Colony leaving two or more widows, they are entitled to share equally the share which the Statute of Distribution allots to the widow. *In the goods of Lao Leong Ann*, and other cases. Maria was therefore entitled as a widow of Low Kay Whay.

Mundell (for Tan Joon Neo, the legal personal representative of Chua Geok Koon) did not oppose the claim of Maria except in so far as such claim was made to the whole of the one fourth share of income. He contended that Chua Geok Koon's legal personal representative was entitled to one half of such share of income.

S. G. Pillay (for Tay Sim Geok the representative of Chan Tew Neo deceased, the widow and residuary legatee of the Testator). The general presumption is applicable in this case, and as Maria was not a wife at the date of the Will she cannot now take any benefit as a widow of Low Kay Whay. *In re Coley. Hollinshead* v. *Coley*, (1903) 2 Ch. 102. *In re Griffiths' Policy*, (1903) 1 Ch. 739. The Testator evidently contemplated one widow only.

W. H. Salt for the Trustees.

Cur. Ad. Vult.

PRICHARD, J., delivered an oral judgment holding that both Chua Geok Koon and Maria had been entitled as widows of Low Kay Whay under the gift in the Will; but as the children of Maria, and the representatives of the children of Chua Geok Koon had not been served, he held that the proceedings were deficient for want of parties and adjourned the question as to what interest, if any, each took and made an order for adding the necessary additional parties.

Order Accordingly.

Solicitors for Plaintiffs: *Allen & Gledhill.*
Solicitors for first Defendant: *Braddell Bros.*
Solicitors for second Defendant: *Sisson & Delay.*
Solicitor for third and fourth Defendants: *S. G. Pillay, Esq.*

[COURT OF CRIMINAL APPEAL]
HUGGARD, C.J., TERRELL & MILLS, JJ.

February 2, 1935.

REX v. KOH SOON POH.

[SINGAPORE CRIMINAL APPEAL No. 3 of 1934]

Ordinance No. 53 (Evidence) S. 157—Corroboration of testimony of witness—nature of corroboration—Criminal Procedure Code S. 199—duties of Trial Judge thereunder.

Any former statements made by a witness and coming within S. 157 of Ordinance No. 53 (Evidence), are admissible as corroboration of the evidence given by such witness at the trial.

Discussion of procedure proper to be observed by the Trial Judge on a criminal trial when counsel for the Defendant submits that there is no case to go to the jury.

Criminal Appeal.

V. D. Knowles for Appellant.

Adrian Clark, D.P.P., for Crown.

The Appeal was heard by Sir Walter Huggard, C.J., Terrell and Mills, JJ.

The facts and arguments sufficiently appear from the Judgment of the Court.

Cur. Ad. Vult.

The Judgment of the Court was delivered by **TERRELL, J.**—

The Appellant was tried before Prichard J. and a jury and convicted on three charges of abetting the forgery of certain documents by one Lim Thai Hock. Lim Thai Hock was clearly an accomplice. The only ground of appeal which it is necessary to notice is the following :—

> " That the attention of the Jury was not sufficiently directed to the danger of accepting accomplice's evidence, and that there was no corroboration given at the trial."

Misdirection and corroboration in fact are, of course, different points and it will be convenient to consider first of all whether there was any and, if so, what corroboration of Lim Thai Hock's evidence.

One of the witnesses for the prosecution was one Samuel, an ex-schoolmaster. He was present when several of the letters were said to have been written by Lim Thai Hock at the dictation of the Accused and, when referred to, gave his assistance in spelling and in rendering certain words and phrases into proper English. He says he never saw any signature put at the bottom of any of the letters but heard Lim Thai Hock asking the accused to pay him well for the forging of a name. Except for that, there is no evidence that Samuel was interested whether the letters were signed or not. He may or may not have been an accomplice in the matter of the defamatory remarks about various people which the letters contained, though even this is open to doubt. In order that Samuel's evidence may be